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BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

# Federal Communications Commission

WASHINGTON, D.C. 20554

IN THE MATTER OF

COMPUTER III REMAND PROCEEDINGS:  
BELL OPERATING COMPANY SAFEGUARDS;  
AND TIER 1 LOCAL EXCHANGE COMPANY  
SAFEGUARDS

CC DOCKET NO. 90-623

APPLICATION OF OPEN NETWORK  
ARCHITECTURE AND NONDISCRIMINATION  
SAFEGUARDS TO GTE CORPORATION

CC DOCKET NO. 92-256

TO: THE COMMISSION

REPLY COMMENTS OF COMPUSERVE INCORPORATED  
ON RULES GOVERNING TELEPHONE COMPANIES' USE OF  
CUSTOMER PROPRIETARY NETWORK INFORMATION

CompuServe Incorporated ("CompuServe"), by its attorneys, hereby submits its Reply Comments in accordance with the Public Notice issued by the Commission concerning the Commission's rules governing telephone companies' use of customer proprietary network information ("CPNI").<sup>1/</sup>

The Additional Comments filed by the telephone companies and their trade associations are more notable for their omissions than their arguments. The local exchange carriers ("LECs") are not responsive to the concerns raised by the

<sup>1/</sup> In the Matter of Computer III Remand Proceedings: Bell Operating Company Safeguards; and Tier 1 Local Exchange Company Safeguards, CC Docket No. 90-623; Application of Open Network Architecture and Nondiscrimination Safeguards to GTE Corporation, CC Docket No. 92-256, Order, DA 94-331, released April 14, 1994.

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Commission in the March 10, 1994 Public Notice.<sup>2/</sup> Specifically, the LECs (1) fail to acknowledge generally the inherent advantages they enjoy because they are monopoly service providers and (2) do not address fairly the central issue of whether their alliances, acquisitions and mergers with non-telephone company partners create a need for changes to the Commission's rules regarding CPNI.

Despite the concerns evident in the Commission's decision to revisit the CPNI rules, in their Additional Comments, the LECs generally ignore the advantages they enjoy as monopoly service providers. Rather, in their Comments, the LECs simply argue they should be treated the same as other service providers.<sup>3/</sup> The reason for this intentional omission is clear. There is no way to deny effectively that the competitive disadvantages to those who compete with the LECs are great and that these disadvantages may be exacerbated with the rapidly

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<sup>2/</sup> In the Matter of Computer III Remand Proceedings: Bell Operating Company Safeguards; and Tier 1 Local Exchange Company Safeguards, CC Docket No. 90-623; Application of Open Network Architecture and Nondiscrimination Safeguards to GTE Corporation, CC Docket No. 92-256, Additional Comment Sought on Rules Governing Telephone Companies' Use of Customer Proprietary Network Information, FCC 94-63, released March 10, 1994.

<sup>3/</sup> See, e.g., Comments of Ameritech at p. 8 ("[a]rtificial distinctions between service providers only result in asymmetrical regulation without any corresponding consumer benefits."); Comments of Bell Atlantic at pp. 3 - 5 (generally referring to "American corporate life" without recognition of the special position of LECs); NYNEX Comments at p. 9 ("the same privacy protections should apply to the provision of telephone service whether provided by a dominant or non-dominant carrier"); Comments of BellSouth at p. 9 ("inquiry should not be limited to consideration merely of whether BOCs' and other LECs' customer records merit 'special' privacy protection").

developing alliances in the telecommunications industry.<sup>4/</sup> It is undisputed that the LECs maintain a dominant position in the operation of the local exchange network which serves as the "tollgate" through which all users of the local exchange must pass.<sup>5/</sup>

For example, Ameritech compares its use of CPNI to the use of customer information by "companies, such as Merrill Lynch and American Express."<sup>6/</sup> This comparison demonstrates the LECs' complete failure to recognize the fundamental challenge to the Commission in promoting a fair and competitive telecommunications marketplace: the elimination of the LECs' opportunity and incentive for anticompetitive behavior which results from their monopoly position.<sup>7/</sup> Unlike the LECs, companies such as Merrill

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<sup>4/</sup> The major LEC trade association agrees the industry is changing rapidly: "New mergers, acquisitions, and alliances in the communications industry are announced practically every day." See Comments of United States Telephone Association ("USTA") at p. 5.

<sup>5/</sup> Indeed, today CompuServe remains virtually totally dependent upon the LECs for the local exchange lines which it uses to distribute its services to its subscribers. See Additional Comments of CompuServe at pp. 6-7.

<sup>6/</sup> Comments of Ameritech at p. 9.

<sup>7/</sup> Indeed, the LEC's failure to acknowledge the inimical effect of the asymmetrical CPNI rules on the competitive telecommunications marketplace is evidence of their desire to further exploit such advantages at the expense of non-affiliated information service providers. One LEC proposes that the Commission "clarify" its rules to allow any LEC customer service representative to "handle" calls from customers who affirmatively requested blocking. Under this proposal, the LEC would only be prohibited from "proactively" selling LEC enhanced services to customers who have requested blocking. Presumably, LEC sales representatives would be free "passively" to market LEC enhanced  
(continued...)

Lynch, American Express and CompuServe do not possess monopoly power. Thus, individuals have a choice from whom they obtain the services these companies provide. By virtue of their role as a monopoly supplier, the LECs accumulate the CPNI data generated by the use of their regulated monopoly telephone services by all LEC customers, including both independent ESPs and the customers of independent ESPs.

The Commission must remain concerned with the increased opportunity for LECs to violate customer privacy expectations. However, even aside from customer privacy expectations, the ability to share this valuable information with an increasing number of non-telephone company partners is inconsistent with furthering a healthy competitive telecommunications marketplace..<sup>8/</sup> The Commission should return to symmetrical CPNI rules which would move the industry toward a "level playing field" by reducing LEC anticompetitive advantages.

The Additional Comments filed by the LECs by and large do not directly address the issue whether new alliances with non-telephone companies necessitate a revision to the Commission's

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<sup>7/</sup> (...continued)  
services to such customers. Comments of Ameritech at p. 10. This proposal to distinguish between "proactive" and "passive" marketing over the telephone strains credulity. It would invite abuse and obviously would not be enforceable.

<sup>8/</sup> It appears that the telephone companies agree the CPNI rules should be used to preserve a fair and competitive telecommunications industry environment. See, e.g., NYNEX Comments at p. 2 ("they [the CPNI rules] were crafted primarily to address competitive concerns"); Comments of Bell Atlantic at p. 2 ("[t]he Commission developed the CPNI rules primarily to deal with competitive, not privacy, concerns...").

CPNI rules. CompuServe consistently has argued that the Commission's asymmetrical rules provide LECs with unfair advantages regardless of any alliances they may have with non-telephone companies. As described above, and in CompuServe's Additional Comments, the trend toward mergers between LECs and non-telephone companies heightens the anticompetitive potential of the asymmetrical rules because it broadens the range of means and increases still further the resources by which the LECs can exploit the advantages they enjoy by virtue of their monopoly position.<sup>2/</sup>

In light of the changes in the relationships between companies in the telecommunications industry, and the fundamental unfairness of the FCC's existing asymmetrical policy, the FCC should revise its CPNI rule. This would both help negate the competitive advantage presently enjoyed by the LECs as the recipient of this information by virtue of their monopoly position and also protect the privacy interests of customers who may be unaware or uninformed as to the existence, extent, or use of their CPNI. This uniform application of a prior authorization

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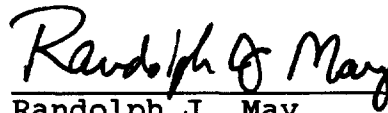
<sup>2/</sup> Despite the Commission's clear call for comments relating to the "changing environment" in the telecommunications industry, the LECs generally preferred to devote their comments to the Commission's past discussions regarding "business relationships" in the context of prohibitions on the use of artificial or prerecorded messages. Several of the LECs cite the Commission's Report and Order implementing the Telephone Consumer Protection Act of 1991. Specifically, those LECs cite to provisions in that order regarding autodialers and prerecorded messages. See e.g. Comments of BellSouth at pp. 6-7; Comments of USTA at p. 3; Comments of Bell Atlantic at pp. 2-3. NYNEX Comments at pp. 6-7.

rule is even more necessary in an environment where new LEC alliances with non-telephone concerns create the potential for greater harm to competitive markets and customer privacy as a result of the enlarged size and scope of the combined enterprise.

Respectfully Submitted

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BY:

A handwritten signature in cursive script, reading "Randolph J. May", is written over a horizontal line.

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May 19, 1994

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I, E. Bailey, do hereby certify that true and correct copies of the foregoing document, "Reply Comments of CompuServe Incorporated on Rules Governing Telephone Companies' Use of Customer Proprietary Network Information," filed in the matter of Computer III Remand Proceedings: Bell Operating Company Safeguards; And Tier 1 Local Exchange Company Safeguards, CC Docket No. 90-623; Application of Open Network Architecture and Nondiscrimination Safeguards to GTE Corporation, CC Docket No. 92-256; on behalf of CompuServe Incorporated, were served by First Class United States Mail, postage prepaid, or hand delivered, this 19th of May 1994 on the following:

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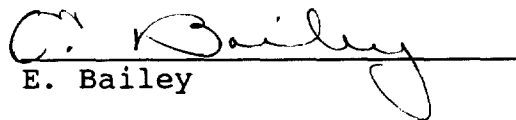
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